

Exhibit 16

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen,)
Plaintiff,) CV 03-00385 SOM-LEK
vs.) Honolulu, Hawaii
HAWAII EXPRESS SERVICE, INC.,) September 28, 2004
a California corporation,) 9:00 A.M.
et al.,) Continued Hearing on
Defendants.) Plaintiff's Motion for
Issuance of Preliminary
Injunction

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SUSAN OKI MOLLWAY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

TIMOTHY J. HOGAN, ESQ.
Lynch Ichida Thompson Kim
& Hirota
First Hawaiian Tower
1132 Bishop St., Ste. 1405
Honolulu, HI 96813

For the Defendant
Fleming Companies, Inc.:

ERIC C. LIEBELER, ESQ.
MELISSA M. DULAC, ESQ.
Kirkland & Ellis LLP
777 South Figueroa St.
Los Angeles, CA 90017

For the Defendants
Fleming Companies, Inc.,
C&S Wholesale Grocers,
C&S Acquisitions,
C&S Logistics:

LEX R. SMITH, ESQ.
Kobayashi Sugita & Goda
First Hawaiian Center
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For the Defendants
Mark Dillon, Brian
Christensen, Teresa Noa:

LYLE S. HOSODA, ESQ.
345 Queen St., Ste. 804
Honolulu, HI 96813

1 "Mr. Berry has a grudge against Fleming, which he himself
2 told me in so many words while I was still with API." You
3 see that?

4 A Yes, I do.

5 Q Does that properly reflect a conversation you had
6 with Mr. Berry at some point in the past?

7 A Yes, it does.

8 Q If you were ordered, Mr. Dillon, to stop using
9 spreadsheets, what impact would that have on the
10 operations out at Kapolei?

11 A I don't see how we could work. It wouldn't be
12 possible from what I -- we have to have something to
13 handle that volume of data. I just don't know what else
14 we could use.

15 Q Is it fair to say, sir, if you're ordered to stop
16 using the spreadsheets, that running the logistics
17 operation out at Kapolei would become much more difficult?

18 A Much more --

19 Q Difficult. Difficult, sir.

20 A I'd say impossible. But, yeah, I can't conceive of
21 it. I don't know how we would carry on.

22 MR. LIEBELER: No further questions, Your
23 Honor.

24 THE COURT: Okay. Recross.

25 MR. HOGAN: Briefly, Your Honor.

1 COURT REPORTER'S CERTIFICATE

2 I, Debra Kekuna Chun, Official Court Reporter,
3 United States District Court, District of Hawaii, do
4 hereby certify that the foregoing is a correct transcript
5 from the record of proceedings in the above-entitled
6 matter.

7 DATED at Honolulu, Hawaii, October 27, 2004.

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DEBRA KEKUNA CHUN

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RPR, CRR

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